

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

BRANDON HUGHES,
*Individually and on behalf of all others
similarly situated,*

Plaintiff,

v.

NATIONAL FOOTBALL LEAGUE,

Defendant.

Case No: 22-CV-10743

JURY TRIAL REQUESTED

**MOTION FOR LEAVE TO FILE
SECOND AMENDED CLASS ACTION COMPLAINT**

Brandon Hughes, by and through the undersigned, moves this Court, pursuant to FED. R. CIV. P. 15, for leave to file the attached Second Amended Class Action Complaint. In support of this motion, Plaintiff states as follows:

1. The operative Complaint in this matter was filed February 25, 2023 (ECF #40).
2. Defendant filed a motion to dismiss on March 2, 2023 (ECF #44).
3. Plaintiff filed an opposition to the motion to dismiss on March 23, 2023 (ECF #62).
4. Defendant filed a reply regarding the motion to dismiss on April 6, 2023 (ECF #63).
5. Numerous letters regarding supplemental authority have been filed since the filing of Defendant's reply brief. (ECF #67-70).

6. As the body of VPPA-Pixel caselaw has developed, Plaintiff's proposed Second Amended Complaint clarifies and further explains the exclusive access, content, and programming that Plaintiff, as a subscriber to Defendant's NFL+ service, received.¹

7. As such, good cause exists for Plaintiff to be allowed to file an Second Amended Complaint.

8. According to FED. R. CIV. P. 15(a)(2) "[t]he court should freely give leave when justice so requires."

9. Here, given recent developments in VPPA-Pixel caselaw, notions of justice require that Plaintiff be allowed to fully explain his status as a subscriber to Defendant's NFL+ service, and therefore "consumer" pursuant to 18 U.S.C. § 2710(a)(1).

10. Plaintiff's proposed Second Amended Complaint is attached hereto as Exhibit A (redline) and Exhibit B (clean).

WHEREFORE, Plaintiff requests leave to file a Second Amended Class Action Complaint.

Dated: August 11, 2023

Respectfully Submitted:

By: /s/ Michael L. Murphy
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¹ At least, an appeal to the Second Circuit has been filed on the issue of who is a "consumer" under the VPPA. See, *Salazar v. National Basketball Association*, No. 22-cv-7935 (S.D.N.Y.), ECF 53, Notice of Appeal.

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**pro hac vice*

Counsel for Plaintiff and the Putative Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was filed with the Clerk of the Court using the CM/ECF system, which will provide notice and allow access to all counsel of record.

/s/ Michael L. Murphy
Michael L. Murphy